

Shared International Responsibility for Human Rights Violations: The 2022 World Cup in Qatar

Raquel Regueiro Dubra

2019-07-05T09:00:20

Introduction

Since Qatar won the hosting rights for the 2022 FIFA World Cup in 2010, recurrent human rights violations of migrants working on building or refurbishing new infrastructure for the tournament have been denounced (see the reports by Amnesty International [here](#) and [here](#)). As football's governing body, FIFA should have been aware of the risk that the organisation of the 2022 World Cup could entail human rights violations in the country. Despite progress made in these past few years with regard to the rights of those migrant workers due mostly to international pressure, infringements such as limitations to the freedom of movement, violations of the right to the enjoyment of just and favourable conditions of work, which also entails a failure to guarantee the right to health, discrimination on the basis of nationality and restrictions to the right to access justice, [still occur](#).

In this blog, I investigate how a migrant worker could engage the legal responsibility of the different actors involved in the organisation of the FIFA World Cup 2022. The main challenges are the lack of regulation of private entities under International Law, the non-existence of regional human rights courts in Asia and the difficulties encountered to seek the protection and reparation of the rights violated at the national level. The respect and protection of human rights can nevertheless only be guaranteed by the availability of effective judicial remedies.

To prevent the protection of human rights violations suffered by migrant workers to depend exclusively on the good will of the host State or the home State, I believe [shared responsibility](#) could be a useful framework to ensure a proper reparation to the victims as well as the accountability of the multiple actors that have contributed to the violations of migrant workers' rights in Qatar in the context of the build-up to the 2022 FIFA World Cup (see SHARES [here](#)).

Human rights violations and the 2022 World Cup in Qatar

The 2022 World Cup in Qatar introduces major novelties: for the first time, an Arab and Middle East state organizes such a mega-sporting event. Qatar is also the smallest country per area and population to host the World Cup. The organization represents a huge logistical challenge and requires a large workforce.

Since the beginning of the construction works for the 2022 World Cup, claims of serious violations of the migrant workers' rights have been recurrent. Under the Kafala system ([Law No. 4 of 2009 Regulating the Entry and Exit of Expatriates, their Residence and Sponsorship, State of Qatar](#)), the employer (*Kafil*) was responsible for the safety and protection of migrant workers. The practices resulting from this system were considered modern-day slavery and human trafficking, as migrant workers suffered abusive conditions before, during and after their entry in Qatar as well as in the construction field with long working hours under extreme temperatures, low wages (or no wages if the employer decided to withhold large portions of salary for extra charges), delays in the payment of salaries, physical and psychological harm and deplorable housing conditions, frequently housed in “workers camps” without necessary amenities (see [here](#) and [here](#)). In fact, human trafficking for forced labour was the object of a [complaint](#) against Qatar filed with the ILO on 12 June 2014 relating to the violation of ILO Conventions Nos. 29 and 8. The labour reforms introduced by Qatar led to the [closure](#) in 2017 of the complaint procedure under Article 26 of the ILO Constitution.

However, the abolition of the direct employer's permission to leave the country does not seem to impair the employer's capacity to refuse the provision of “non-objection certificates” which are needed for workers to change jobs before the end of the contract. Moreover, most of the new labour legislation has not been fully implemented yet (see the reports [here](#) and [here](#)) : confiscation of passports and harsh labour conditions are still a reality in the country; the minimum temporary wage is insufficient to ensure a proper standard of living (the temporary minimum wage is of QR 750 – around USD 200 – per month); the law still provides for the need to get an employer's “permission” to leave the country for 5% of the workers “due to the nature of their work”; and, the newly set-up labour courts in charge of judging the workers complaints are overwhelmed and rather ineffective.

The differentiated responsibilities of FIFA, Qatar and Switzerland

Qatar, the host state, ratified 6 out of the 189 ILO conventions and the core human rights treaties (including the International Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights). Its obligations, under International Human Rights Law, are to respect, to protect and to fulfil human rights. The duty to protect entails for the state to ensure the protection of individuals against human rights abuses. Switzerland, FIFA's home State, is actively engaged and strongly committed to human rights. Under the ICESCR, the home State is obliged to take steps to prevent human rights contraventions abroad by corporations, which have their main offices under their jurisdiction. [General Comment No. 31](#) of the Human Rights Committee declares that State parties have the obligation to protect civil and political rights also against acts committed by private persons or entities. The failure to take proper measures or to exercise due diligence to prevent, punish, investigate or redress the damage caused by such acts is also a breach of the ICCPR.

Despite recent labour law reforms, Qatar's international responsibility could still be engaged for human rights abuses on account of the violation of its duty to protect (among others, the right to work, the right to non-discrimination, the right to freedom of movement and the right to access to justice). Indeed, the Qatari Supreme Committee for Delivery and Legacy is the government agency responsible for delivering the infrastructure required for the 2022 World Cup (see [here](#) and [here](#)). Among other tasks, it selects the main contractors for the construction of the stadiums.

As Millward [notes](#) "corporate building contractors are employed by the sovereign State of Qatar and then, in most cases, find sub-contractors to deliver their projects". Thus, it could be argued that the wrongful actions of the contractors and subcontractors related to migrant workers on building sites connected to the FIFA World Cup can be attributed to the State of Qatar due to the failure of one of its organs (the Supreme Committee) to comply with the state's human rights obligations.

While Qatar has the power to exclude contractors that do not respect workers' human rights because it holds economic (and regulatory) authority over them, FIFA could also be more proactive in pushing host countries to live by human rights standards. Through its bidding process to host the World Cup, FIFA could have imposed conditions related to the treatment of the workers active on construction sites and therefore, decided to exclude the candidate countries unable or unwilling to follow them. Even after winning the bid, the Organizing Association Agreement, signed between the host country and FIFA, grants FIFA "[a pseudo authority inside national boundaries](#)" by requiring the host State to pass specific national legislations. FIFA sets forth the list of (technical and other) requirements for the stadiums, the plans for the construction or renovations of stadiums must be approved by FIFA and the organization has the right to carry out stadium inspections at its sole discretion and issue directives based thereon. FIFA can also reject the selection of a stadium and issue new directives. So, FIFA has some leverage to mitigate and prevent human rights abuses linked to the organisation of the World Cup or, at the very least, there are possible ways for FIFA to increase its leverage on the contractors and sub-contractors. That capacity has been pointed out by FIFA's own Human Rights Advisory Board in its [Second Report](#) of September 2018.

As mentioned above, Switzerland also has an obligation to take appropriate measures to prevent, punish, investigate and redress human rights abuses committed by the entities under its jurisdiction. Although human rights conventions remain usually silent with respect to extraterritorial application, as FIFA's home state, Switzerland has an obligation of due diligence over the activities of its private entities overseas under the ICCPR and the ICESCR.

Nonetheless, when faced with the claim of Mr. Nadim Shariful Alam against FIFA, a Swiss civil court dismissed the case (for more details, see the blogs [here](#) and [here](#)). Mr. Alam is a Bangladeshi citizen whose passport had been confiscated in 2014 by its employer, making it impossible for him to travel and he was therefore totally dependent on his *Kafil*. During his stay in Qatar, Mr. Alam was allegedly living in a workers camp with 2250 other migrants under miserable conditions.

Due to the prohibition for migrant workers to join trade unions, he could not ask for the protection of his rights nor for reparation in Qatar. The claim, brought by the Netherlands Trade Union Confederation, the Bangladeshi Free Trade Union Congress, the Bangladesh Building and Wood Workers Federation and Mr. Alam, referred to FIFA's obligation of due diligence and its capacity to promote legislative and significant change in Qatar. It alleged that:

- FIFA committed a wrongful act by selecting Qatar for the 2022 World Cup without ensuring the proper protection of the rights of migrant construction workers;
- FIFA failed to fulfill its obligation to request Qatar to protect migrant workers and to demand legal reforms;
- Therefore, FIFA violated Mr. Alam rights and had to pay for the damage resulting from its unlawful actions.

In its [judgement](#) of 3 January 2017, the Commercial Court of the Canton of Zürich dismissed the claim of Mr. Alam on the motive that the case was not a commercial dispute that fell within the jurisdiction of the tribunal and that the claim was not enforceable and specific enough. However, it would have been impossible for the plaintiffs to bring the case before a Swiss Labour Tribunal due to the fact that FIFA was not the direct employer of Mr. Alam. The tribunal would certainly have dismissed his claim (Art. 34 Swiss Code de Procédure Civile). Thus, it seems that Swiss courts do not have jurisdiction to decide on claims of migrant workers against FIFA alleging labour rights violations in Qatar connected to the organisation of the FIFA World Cup. Should the [popular initiative](#) to amend the Swiss Constitution become a reality, private companies will have an obligation, under Swiss law, to respect, protect and monitor human rights abroad. The new Article 101a of the Constitution would certainly help to clarify the legal situation and allow Swiss courts to establish jurisdiction in case of human rights abuses overseas. It remains unclear however if Article 101a could apply to FIFA's actions bearing in mind that the organization has been formally created as an association under Article 60 and seq. of the Swiss Civil Code (Article 1 [FIFA Statutes](#)). With a revenue of 484 million USD and a total projected investment/expenses of 1108 million USD for 2020 (see [here](#)), FIFA is, for Bean, a "non-listed, economically significant" company or organization under the Swiss Code of Best Practices for Corporate Governance¹ B. W. Bean, "FIFA – Where Crime pays" in M. Breuer and D. Forrest (Ed.), *The Palgrave Handbook on the Economics of Manipulation in Sports*, Palgrave MacMillan, Cham, 2018, p. 305.. Should the Constitution be amended, Swiss courts will clarify the scope of Article 101a. However, that future discussion does not diminish the actual obligation Switzerland has to ensure to victims access to proper remedies to claim reparation for human rights violations linked to Swiss corporations or associations (such as FIFA).

Towards an effective shared responsibility between FIFA, Qatar and Switzerland?

In situations of “governance gaps” (multiple actors are unable or unwilling to effectively protect human rights), shared responsibility might be a useful framework to better allocate international responsibility among multiple actors. With regard to the 2022 World Cup, Qatar, FIFA and Switzerland have contributed to a single harmful and undesirable outcome (systematic abuses of the rights of migrant workers) that took a variety of forms (discrimination, unlawful restrictions to freedom of movement, violations of the right to work, the right to health and the right to be free from forced labor, non-access to justice). However, they did not act as a collective entity (human right abuses do not result from instructions jointly issued) and they are not bound by the same obligations (Qatar had a duty to protect human rights in its territory, Switzerland did not provide access to justice to rights holders to claim reparations from a Swiss private entity (FIFA), and FIFA failed to exercise proper leverage before and after the selection of Qatar as the host State of the 2022 World Cup). Nonetheless, each of the actors were fully aware of the consequences of the lack of prevention and punishment of the recurrent wrongful conducts.

As Qatar and Switzerland are responsible in respect to the same injury, I believe both of them have the obligation to provide reparation. Furthermore, the responsibility of each of the states will not be diminished by the involvement of the other state²⁾A. Nollkaemper, “[Issues of Shared Responsibility before the International Court of Justice](#)”, in E. Rieter/H. de Waele (Ed.), *Evolving Principles of International Law. Studies in Honour of Karel C. Wellens*, Brill/Nijhoff, 2012, p. 205. (diffusion of responsibility has to be prevented).

With regard to the exercise of jurisdiction, it seems Qatar faces huge difficulties to properly address the claims of the migrant workers. Thus, the possibilities for migrant workers to obtain reparation before Qatar’s national courts seem non-existent at this time. Concerning the jurisdiction of international courts, it is likely that migrant workers could only be able to access the European Court of Human Rights for the breach of the due diligence obligation of Switzerland. The absence of regional human rights courts in Asia leaves only the (highly unlikely) possibility that the home states of migrant workers (Bangladesh, Nepal, Philippines, etc.) exercise diplomatic protection and claim reparation on their behalf before an international court.

It is though more difficult to address a shared responsibility between both States and FIFA. As mentioned above, no primary rules of International Law are per se binding on FIFA (despite the breach of its soft law obligation of due diligence). The absence of any “hard direct corporate responsibility”³⁾E. De Brabandere, “[Non-State Actors and Human Rights. Corporate Responsibility and the Attempts to Formalize the Role of Corporations as Participants in the International Legal System](#)”, in J. d’Aspremont (Ed.), *Participants in the International Legal System: Multiple Perspectives on Non-State Actors in International Law*, Routledge, 2011, p. 274. See also C. M. Bailliet, “What is Become to Human Rights International Order in an Age of Neo-Medievalism?”, in C. M. Bailliet (Ed.), *Non-State Actors, Soft Law and Protective*

Regimes: From the Margins, Cambridge University Press, 2012, pp. 120-123. entails that FIFA has no direct human rights obligations under International Law.

Consequently, trying to establish and to hold private entities responsible for human rights abuses to which they have contributed is exasperatingly difficult. The non-existence of binding international rules on the matter diverts the discussion towards state responsibility and highlights the limited possibilities to activate human rights enforcement mechanisms. Many are the obstacles standing in the way of the victims. While, the impact of public shaming by NGOs on the reputation of the actors involved could be significant, much remains to be done in order to ensure the protection of the migrant workers in Qatar.

References

- 1. B. W. Bean, "FIFA – Where Crime pays" in M. Breuer and D. Forrest (Ed.), *The Palgrave Handbook on the Economics of Manipulation in Sports*, Palgrave McMillan, Cham, 2018, p. 305.
- 2. A. Nollkaemper, "Issues of Shared Responsibility before the International Court of Justice", in E. Rieter/H. de Waele (Ed.), *Evolving Principles of International Law. Studies in Honour of Karel C. Wellens*, Brill/Nijhoff, 2012, p. 205.
- 3. E. De Brabandere, "Non-State Actors and Human Rights. Corporate Responsibility and the Attempts to Formalize the Role of Corporations as Participants in the International Legal System", in J. d'Aspremont (Ed.), *Participants in the International Legal System: Multiple Perspectives on Non-State Actors in International Law*, Routledge, 2011, p. 274. See also C. M. Bailliet, "What is Become to Human Rights International Order in an Age of Neo-Medievalism?", in C. M. Bailliet (Ed.), *Non-State Actors, Soft Law and Protective Regimes: From the Margins*, Cambridge University Press, 2012, pp. 120-123.

